



Nevada State Board of Medical Examiners

* * * MINUTES * * *

OPEN SESSION BOARD MEETING

Held in the Conference Room at the offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, NV 89502

and videoconferenced to

the conference room of the Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, MAY 8, 2009 – 8:30 a.m.

and

SATURDAY, MAY 9, 2009 – 8:30 a.m.

FRIDAY, MAY 8, 2009

Board Members Present

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Renee West, Secretary-Treasurer
Sohail U. Anjum, M.D.
Javaid Anwar, M.D.
Jean Stoess, M.A.
S. Daniel McBride, M.D.
Van V. Heffner

Board Members Absent

Beverly A. Neyland, M.D.

Staff Present

Louis Ling, J.D., Executive Director
Edward O. Cousineau, J.D., General Counsel
Lyn E. Beggs, J.D., General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Douglas C. Cooper, Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Carolyn H. Castleman, Deputy Chief of Licensing
Jerry C. Calvanese, M.D., Medical Reviewer

Also Present

Christine M. Guerci-Nyhus, J. D., Chief Deputy Attorney General
Keith Marcher, J.D., Senior Deputy Attorney General
Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation
John Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member (in Las Vegas)
Roy M. Cary, Jr., P.A. C, Physician Assistant Advisory Committee Member (in Las Vegas)

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS - Charles N. Held, M.D., President

- Roll Call/Quorum

The meeting was called to order by President Charles N. Held, M.D., at 8:30 a.m.

Ms. Guerci-Nyhus took roll call, and all Board Members were present with the exception of Beverly A. Neyland, M.D. Ms. Guerci-Nyhus announced that there was a quorum.

Agenda Item 2

APPROVAL OF MINUTES

- February 6, 2009 Board Meeting – Open Session

Dr. Held requested that the minutes be amended to include him in the list of Board Members who attended the meeting.

Mr. Heffner moved to approve the Minutes of the February 6, 2009 Board Meeting – Open Session. Ms. Stoess seconded the motion, and it passed unanimously.

Agenda Item 3

CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA

ADMINISTRATIVE CODE CHAPTER 630

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Require Nevada Physicians Who Sponsor Demonstrations by Out-of-State Physicians to Adhere to the Standards Enunciated in Chapter 629 of the NRS
- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.275 to Make Confidentiality Of Certain Information Applicable to Practitioners of Respiratory Care, as Well as Physicians and Physician Assistants
- Edward O. Cousineau, J.D., General Counsel

Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Require Nevada Physicians Who Sponsor Demonstrations by Out-of-State Physicians to Adhere to the Standards Enunciated in Chapter 629 of the NRS

Mr. Cousineau explained that the proposed amendment to NAC 630.225 would require the sponsoring Nevada physician to bear the responsibility for preparation, retention and ultimate dissemination of medical records related to these demonstrations, and will reconcile some ambiguity in NRS Chapter 629. A workshop and public hearing were held, and no public input was received. Mr. Cousineau requested that the Board adopt the regulation as drafted.

Dr. Anjum moved that the Board adopt the regulation as written. Mr. Heffner seconded the motion, and it passed unanimously.

Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.275 to Make Confidentiality of Certain Information Applicable to Practitioners of Respiratory Care, as Well as Physicians and Physician Assistants

Mr. Cousineau explained that the proposed regulation would amend NAC 630.275, which addresses confidentiality of information relative to programs related to impairment. The amendment would expand the protections currently afforded to physicians and physician assistants to include respiratory therapists. A workshop and public hearing were held, and no public input was received. Mr. Cousineau requested that the Board adopt the regulation as drafted.

Dr. Rodriguez moved that the Board adopt the regulation as written. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 4

PRESENTATION AND DISCUSSION REGARDING HEARINGS PROCEDURES

- Louis Ling, Executive Director

Mr. Ling described changes that have been made to the Board's hearings procedures. In the past, all hearings were held before a hearing officer, and the Board adjudicated those hearings at a Board meeting at some date after the hearing was held. Many hearings will still be held before a hearing officer, but beginning with this meeting, some hearings will now be held before the Board during a Board meeting, and the Board will adjudicate the matter at the conclusion of the hearing. He then described the differences in the Board's role in these two different situations.

Ms. Guerci-Nyhus stated it will be very important when hearings are held before the Board that all Board Members participate and give their opinion.

Agenda Item 5

HEARING IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL
EXAMINERS VS. STEPHEN SELDON, M.D., BME CASE NO. 08-10701-2

- Christine M. Guerri-Nyhus, J.D., Chief Deputy Attorney General

Dr. Seldon was present in Las Vegas. A court reporter was present in Reno and reported the hearing.

Dr. Held stated that he, Dr. Rodriguez and Ms. Stoess would not be participating in the matter as they are members of the Investigative Committee that authorized the filing of the complaint against Dr. Seldon.

Mr. Heffner disclosed that the Nevada Hotel & Lodging Association holds a number of events each year that are open to the public, one of which is the Epicurean Affair, and that Dr. Seldon and his wife have attended some of these events. At no time has he ever discussed any healthcare-related matters with either Dr. Seldon or his wife, so he felt he could be fair and just in adjudicating the matter.

Dr. Seldon stated he had no objection to Mr. Heffner adjudicating the matter.

Ms. Beggs entered her appearance as attorney for the Board's Investigative Committee.

Dr. Seldon entered his appearance and stated he was not represented by an attorney.

Ms. West swore in Dr. Seldon.

Ms. Beggs explained that she had spoken with Dr. Seldon by phone before the hearing began and they had stipulated to admit Investigative Committee Exhibits A through E.

Dr. Seldon confirmed that this was correct.

Ms. West admitted Investigative Committee Exhibits A through E, and each adjudicating Board Member was then provided with these exhibits.

Ms. Beggs presented her opening statement.

Dr. Seldon stated he had no opening statement.

Ms. Beggs presented the Investigative Committee's case.

Discussion ensued concerning the classification of the drug Dr. Seldon allegedly used as a dangerous drug.

Dr. Seldon asked what effect there would be upon any finding of the Board as a result of this hearing if his federal conviction were to be overturned.

Ms. Guerri-Nyhus stated the Board could not make a determination at that time, but if the conviction were to be overturned, he could bring evidence of that decision before the Board at that time.

Dr. Seldon asked whether Ms. Beggs had provided his motion for a new trial and the Government's opposition to the motion to the Board Members. She stated she had not, as he had not requested that she do so, but would at that time if he wanted her to. Dr. Seldon stated that he did, and those documents were admitted into evidence as Respondent's Exhibits 1 and 2 and copies were provided to the adjudicating Board Members.

Dr. Seldon presented his case.

The adjudicating Board Members questioned Dr. Seldon.

Ms. Beggs presented her closing argument and then Dr. Seldon presented his closing argument.

Deliberation by the adjudicating Board Members concerning the findings of fact.

Dr. McBride moved that Paragraphs 1 through 5 be included in the Findings of Fact. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. McBride moved that the Board find that Paragraph 6 was not proven. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. McBride moved that Paragraphs 7 through 10 be included in the Findings of Fact. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Deliberation by the adjudicating Board Members concerning the conclusions of law.

Dr. Anwar moved that the Board find Dr. Seldon guilty of Count I based upon the fact that Dr. Seldon was convicted of a felony related to the practice of medicine or the ability to practice of medicine. Dr. McBride seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Anwar moved that the Board find Dr. Seldon guilty of Count II based upon the fact that Dr. Seldon was convicted of a violation of a federal law regulating the possession, distribution or use of any controlled substance or any dangerous drug. Dr. McBride seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Anwar moved that the Board find Dr. Seldon guilty of Count III, with the exception of the language in Paragraph 20 that was previously stricken by Ms. Beggs, based upon the fact that he was convicted of a violation of federal law, which supports the allegation that he continually failed to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field. Dr. Anjum seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Guerri-Nyhus outlined the options for disciplinary action available to the Board.

Discussion ensued concerning the appropriate discipline to be imposed upon Dr. Seldon in the case.

Dr. McBride moved that the Board revoke Dr. Seldon's license to practice medicine, that he be fined \$5,000 per count, and that he reimburse the Board's fees and costs in the amount of \$10,961.67, with the fine, fees and costs all payable within 90 days. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 6

CONSIDERATION OF REQUEST FOR REINSTATEMENT AND FINAL RESOLUTION OF DISCIPLINARY ACTION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. FREIDA FLEISCHER, M.D., BME CASE NO. 06-4888-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Dr. Fleischer was present in Las Vegas with her attorney, David Kimball, Esq., and Dr. Robert Comeau and Dr. Albert Capanna.

Ms. Beggs stated that the members of the Investigative Committee that brought the case were unqualified to participate in the matter. She then requested that the Board go into Closed Session because the Board would be discussing competency issues in regards to Dr. Fleischer. She asked if there was any objection, and there was none. The Board went into Closed Session.

Upon returning to Open Session, Dr. Anjum moved that the Board reinstate Dr. Fleischer's license, pending favorable outcome of a peer review, and with the restriction that she practice office gynecology only, with close observation and monitorship by Dr. Comeau, and with reports to the Board by Dr. Comeau every two months which are to include the number of patients treated and Dr. Fleischer's performance. Mr. Heffner seconded the motion.

Discussion ensued concerning the level of monitorship that would be provided by Dr. Comeau.

Dr. Anjum amended his motion to add that Dr. Comeau review Dr. Fleischer's charts within 48 hours for the first four weeks of Dr. Fleischer's practice and to monitor her closely as much as he can within the limits of his practice. Dr. Heffner seconded the amended motion.

Dr. McBride asked Dr. Fleischer if she had obtained malpractice insurance coverage and she stated she could obtain it from her previous company.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Beggs asked the Board to dismiss the underlying disciplinary complaint based upon the action taken by the Board that day.

Mr. Heffner moved to dismiss the underlying disciplinary complaint. Dr. McBride seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 7

HEARING IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ANAMIKA JAIN, M.D., BME CASE NO. 08-29655-2

- Keith Marcher, J.D., Senior Deputy Attorney General

Dr. Jain was present in Reno with her attorney, Maria Nutile, Esq. A court reporter was present in Reno and reported the hearing.

Dr. Held stated that he, Dr. Rodriguez and Ms. Stoess would not be participating in the matter as they are members of the Investigative Committee that authorized the filing of the complaint against Dr. Jain.

Ms. Guerri-Nyhus stated that Senior Deputy Attorney General Keith Marcher would be sitting in as counsel to the Board in her stead for this matter.

Dr. Anwar swore in Dr. Jain.

Ms. Beggs confirmed that all adjudicating Board Members had received the materials related to the case.

Ms. Beggs presented her opening statement.

Dr. McBride disclosed that Ms. Nutile is the attorney for Spring Valley Hospital and he is Chief of Staff for Spring Valley Hospital, but they have never discussed the case and he does not believe it is grounds for his recusal.

Ms. Nutile presented her opening statement.

Board Members questioned Dr. Jain.

Ms. Beggs questioned Dr. Jain.

Ms. Nutile questioned Dr. Jain on redirect.

Ms. Beggs presented her closing argument and then Ms. Nutile presented her closing argument.

Dr. Jain presented a closing statement.

Ms. Beggs presented a final statement.

Deliberation by the adjudicating Board Members concerning the evidence presented as it pertained to the counts against Dr. Jain.

Dr. McBride moved that the Board find Dr. Jain guilty of the Twenty-Sixth Cause of Action of the Complaint. The motion died for lack of a second.

Mr. Heffner moved that the Board find Dr. Jain not guilty of the Twenty-Sixth Cause of Action of the Complaint. Dr. Anjum seconded the motion, and it passed, with Dr. McBride opposed to the motion and all other adjudicating members voting in favor of the motion.

Dr. Anjum moved that the Board find Dr. Jain guilty of the Twenty-Seventh Cause of Action of the Complaint. Dr. McBride seconded the motion, and the motion failed, with Dr. Anjum and Dr. McBride voting in favor of the motion and Dr. Anwar and Mr. Heffner opposed to the motion.

Dr. Heffner moved that the Board find Dr. Jain not guilty of the Twenty-Seventh Cause of Action of the Complaint. The motion failed for lack of a second.

Mr. Marcher stated this means there was no action on the Twenty-Seventh Cause of Action.

Dr. McBride moved that the Board find Dr. Jain guilty of the Twenty-Eighth Cause of Action of the Complaint. Mr. Heffner seconded the motion, and it passed, with all adjudicating Board Members voting in favor of the motion.

Dr. McBride moved that the Board find Dr. Jain not guilty of the Twenty-Ninth Cause of Action of the Complaint. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Discussion ensued concerning the appropriate discipline to be imposed upon Dr. Jain.

Dr. McBride moved that Dr. Jain's license be suspended for a total of one year, beginning on the date of her original suspension by the Board, until November 14, 2009, followed by a period of three-years' probation, during which she commit no violation of the Medical Practice Act and she confine herself to practicing within her specialty, that she receive a public reprimand, that she complete a course in medical ethics and that she reimburse the Board's costs and expenses in the amount of \$14,370.45, payable within one year. Dr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Beggs stated that a motion was required in order to proceed with action to lift the injunction that was still in place against Dr. Jain in the District Court.

Mr. Heffner moved that the Board authorize staff to proceed with action to lift the injunction in District Court. Dr. McBride seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

[Ms. West left the meeting during the consideration of this agenda item.]

RECESS

Dr. Anwar recessed the meeting for lunch at 2:00 p.m.

RECONVENE

Dr. Anwar reconvened the meeting at 2:15 p.m.

Lt. David Jones of the Department of Public Safety, Investigations Division, presented Investigator Donald A. Andreas with a letter of commendation for his work on the Dr. Harriston Bass case and thanked him for his efforts and his substantial assistance.

Agenda Item 8

CONSIDERATION OF ORDER TO SHOW CAUSE IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DAVID LINDEN, M.D., BME CASE*

NO. 07-29780-1

- Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

Dr. Linden was present in Reno with his attorney, Andrew Harrison, Esq.

Ms. Beggs described the facts of the case. As part of a previous settlement agreement entered into between the Board and Dr. Linden on December 5, 2007, Dr. Linden was placed on probation with multiple conditions, which included compliance with and completion of his probation with the state of Oklahoma. In September of 2008, the state of Oklahoma filed an additional complaint for failure to comply with the terms of probation and in November of 2008, the state of Oklahoma entered an order that Dr. Linden violated the terms of his probation and placed him on an additional three years' probation. On March 17, 2009, a Motion for Order to Show Cause was filed based upon Dr. Linden's failure to comply with a term of his Oklahoma probation. The Investigative Committee is requesting that the Board impose the 120-day suspension and require reimbursement of the costs and fees associated with the prosecution of the Order to Show Cause.

Mr. Harrison described the background of the case against Dr. Linden in Oklahoma.

Dr. McBride questioned Dr. Linden concerning his arrest in 2008 stemming from Las Vegas casino gambling debts.

Mr. Harrison explained the circumstances surrounding the arrest.

Dr. McBride asked whether Dr. Linden still had a desire to gamble.

Dr. Linden described his current gambling habits and stated he believes his past troubles in the area have given him a considerable amount of empathy in terms of treating patients that have had gambling-related issues, and the like. He then explained why he did not comply with the polygraph requirement.

Dr. Rodriguez asked where Dr. Linden currently stands with the state of Oklahoma.

Mr. Harrison explained that they have extended his probation under the same terms, and he is undergoing polygraphs every six months now.

Dr. McBride moved that the Board extend Dr. Linden's probation in Nevada for two years, to run concurrent with his probation in Oklahoma, and to adopt the same terms of probation as those in Oklahoma, and that any further violation of the conditions of his probation will be grounds for further disciplinary action. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 9

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. BENJAMIN VENGER, M.D.*
BME CASE NO. 08-9819-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Dr. Held stated that Dr. Venger's attorney and one the adjudicating Board members, Ms. West, had to leave the meeting, and therefore a telephonic Board meeting would be held the following Thursday to consider this item.

Agenda Item 10

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER
OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ELY ZASLOW, M.D.*
BME CASE NO. 09-32802-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau explained that this was an out-of-state action arising from disciplinary action against Dr. Zaslow's medical license in North Carolina. He then described the terms of the proposed settlement. An order would be entered finding that Dr. Zaslow violated NRS 630.301(3), he would receive a public reprimand, he must comply with the terms of his probation in North Carolina; and he would reimburse the Board's costs and fees, currently in the amount of \$1,141.53.

Dr. Anwar moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ALBERT COOK, M.D.*
BME CASE NO. 08-4854-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau explained that this was an out-of-state action arising from disciplinary action against Dr. Cook's medical license in California. He then described the terms of the proposed settlement. An order will be entered finding that Dr. Cook violated NRS 630.301(3),

his license would be revoked, with the revocation stayed contingent upon Dr. Cook's compliance with terms of probation in Nevada, he would receive a public reprimand, he must comply with the terms of his probation in California, and he would reimburse the Board's costs and fees, currently in the amount of \$1,547.72.

Dr. Anwar moved that the Board accept the settlement as presented. Dr. McBride seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MARK CAPENER M.D., BME CASE NO. 07-12771-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau stated this was an old case. The complaint was authorized for filing in December 2007, and at that time the evidence supported the filing of two complaints being filed for malpractice, a violation of NRS 630.3062, for failure to maintain adequate records, and a violation of NRS 630.306(2)(a), for engaging in conduct which is intended to deceive. Through the course of litigation and negotiation, the other case was dismissed by the hearing officer, and contemporaneous with that litigation, quite a bit of evidence was provided by Dr. Capener's counsel that was mitigating and exculpatory to some extent. Based upon discussions between counsel, it was concluded that the case would best be resolved through a stipulated settlement. The terms of settlement include reimbursement of \$10,000 of the Board's costs and fees, which is not the full amount but a significant portion thereof, and no admission of wrongdoing.

Discussion ensued concerning why it took so long to bring the case before the Board.

Ms. Stoess moved that the Board accept the settlement as presented. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 13

CONSIDERATION OF DISMISSAL WITHOUT PREJUDICE IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ANNABEL BARBER, M.D., BME CASE NO. 07-11660-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau explained that upon a review of additional information provided after the formal complaint had been filed, the Investigative Committee determined it would be appropriate to dismiss the case at this time. He explained the dismissal was being requested without prejudice so that if Dr. Barber engaged in substantially similar conduct in the future, the case could be revisited and the Board could consider disciplinary action at that time.

Discussion ensued concerning the information that is presented to the Board for consideration of settlements and dismissals and whether dismissal was appropriate in this particular case.

Dr. Rodriguez moved that the Board reject dismissal of the case. Ms. Stoess seconded the motion, and it passed, with Dr. Anwar and Mr. Heffner opposed to the motion and all other adjudicating Board Members voting in favor of the motion.

Further discussion ensued concerning the way cases are presented to adjudicating Board Members, particularly in the case of settlements or recommendations for dismissal.

Agenda Item 14

**CONSIDERATION OF DISMISSAL WITH PREJUDICE IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NERI
BLANCO-CUEVAS, M.D., BME CASE NO. 08-12338-1**

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Dr. Anjum disclosed that he had been involved in the case and therefore was recusing himself from consideration of the matter.

Ms. Beggs explained that after obtaining the original peer review finding, which was the basis of the Investigative Committee's decision to file a formal complaint, the peer reviewer backed out of the case. A second peer review was obtained, and the finding came back as "no malpractice." The Investigative Committee decided to accept the second peer reviewer's finding and is recommending dismissal of the matter.

Discussion ensued concerning the recommendation that the dismissal be made with prejudice.

Mr. Heffner moved that the Board accept the dismissal. Dr. Anwar seconded the motion, and it passed, with Dr. McBride opposed to the motion, Dr. Held abstaining from the vote, and all other adjudicating Board Members voting in favor of the motion.

Agenda Item 15

**CONSIDERATION OF DISMISSAL WITH PREJUDICE IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. GOBINDER S.
CHOPRA, M.D., BME CASE NO. 08-12610-1**

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Agenda Item 16

CONSIDERATION OF DISMISSAL WITH PREJUDICE IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DJORDJE
HRISTIC, M.D., BME CASE NO. 08-12486-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Agenda Item 17

CONSIDERATION OF DISMISSAL WITH PREJUDICE IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. AMY JIUN TSENG, M.D.,
BME CASE NO. 08-10042-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Ms. Beggs asked that the Board consider Items 15, 16 and 17 together, as they all arose from the same circumstances and the same patient. She explained that the Investigative Committee was recommending dismissal of all three cases due to negotiations with counsel for the licensees. She could not go into specific details as to why the negotiations had been made with counsel, but the cases were very old and there were procedural issues that could become extremely difficult, so it was determined it would be appropriate to dismiss the cases.

Dr. McBride moved that the Board accept the dismissal. Mr. Heffner seconded the motion, and it passed, with Dr. Held abstaining from the vote and all other adjudicating Board Members voting in favor of the motion.

[Ms. Guerci-Nyhus left the meeting at the conclusion of this item.]

Agenda Item 18

CONSIDERATION OF REQUEST OF "THE AESTHETIC SHOW" FOR APPROVAL FOR
OUT-OF-STATE PHYSICIANS TO PERFORM NON-SURGICAL AESTHETIC
TREATMENT DEMONSTRATIONS AND TRAINING DURING "THE AESTHETIC
SHOW", JUNE 5-7, 2009, AT CAESARS PALACE IN LAS VEGAS, NEVADA

- Jason R. Michaels, M.D.; Medical Director of "The Aesthetic Show"; Lynnette L. Daniels,
Chief of Licensing

Ms. Daniels stated that all of the physicians who will be participating in the event are in good standing. Dr. Michaels will assume all liability in conjunction with the event and will retain the patient records.

Dr. Rodriguez moved that the Board approve the request. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 19

REPORTS

- Diversion Program - Quarterly Report - Peter Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation
- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - John H. Steinmetz, R.R.T., Advisory Committee Member
- Investigative Committees - Charles N. Held, M.D., President,
Investigative Committee A
Sohail U. Anjum, M.D., Board Member, Chairperson,
Investigative Committee B
 - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Douglas C. Cooper, Chief of Investigations
 - Status of Investigative Caseload
 - Annual Compliance Report for 2008
- Nevada State Medical Association Liaison Report - Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Liaison Report - Benjamin J. Rodriguez, M.D., Board Vice President; Warren Evins, M.D., Ph.D., FACP, Executive Director, Clark County Medical Society
- Washoe County Medical Society Liaison Report - Jeanie L. Catterson, Executive Director, Washoe County Medical Society
- Secretary-Treasurer - Renee West, Secretary-Treasurer
 - Status of Finances
- Federation of State Medical Boards of the United States, Inc.'s 2009 Annual Meeting, April 30-May 2, 2009, Washington, D.C. - Charles N. Held, M.D., President; Beverly A. Neyland, M.D., Board Member; Douglas C. Cooper, Chief of Investigations; Jerry C. Calvanese, M.D., Medical Reviewer

Diversion Program: Quarterly Report

Peter A. Mansky, M.D., Director of the Nevada Health Professionals Assistance Foundation, stated he had spoken with Mr. Ling concerning what the Board wants to do with its diversion program and Dr. Mansky requested that he be allowed to address the Board at its next meeting. He stated that what defines the Foundation's program is it is a 501C3, not for profit corporation, they have a built-in complaint system and they operate like a state employee assistance program, in that they separate treatment from discipline. They offer two types of diversion – one for those who are referred to them following disciplinary action and another for those who come to them before they have committed any patient harm or received any discipline. Therefore, they help in prevention, which is the most important thing. The program is not a treatment program; what they do is evaluate, set up treatment, and educate.

Discussion ensued concerning the status of the RFQ and the process. Mr. Heffner volunteered to assist with the RFQ.

Physician Assistant Advisory Committee

John Lanzillotta, P.A.-C, stated the Advisory Committee had nothing to report at that time.

Practitioner of Respiratory Care Advisory Committee

There was no one present from the Advisory Committee to provide a report.

Investigative Committees – Charles N. Held, M.D., President/Chairperson,
Investigative Committee A
Sohail U. Anjum, M.D., Board Member/Chairperson
Investigative Committee B

- Consideration of Cases Recommended for Closure by the Committees

Dr. Held reported that Investigative Committee A had considered 118 cases, authorized the filing of a formal complaint in 12 cases, issued 17 letters of concern, and recommended closure of a total of 87 cases.

Dr. Anjum reported that Investigative Committee B had considered 116 cases, authorized the filing of a formal complaint in 5 cases, issued 12 letters of concern, and recommended closure of a total of 107 cases.

Dr. Anwar moved to approve for closure the cases recommended by the Investigative Committees. Mr. Heffner seconded the motion, and it passed unanimously.

Investigations Division

- Status of Investigative Caseload

Mr. Cooper reported that there are currently 408 open investigations, which is 66 cases per investigator. There are 43 peer reviews in the field. At the last Investigative Committee meetings, a total of 234 cases were considered, 17 were sent to the Legal Division for formal complaints, 6 peer reviews were added to the peer review queue, 13 cases will require appearances, 29 letters of concern will be sent out and 165 cases were closed for lack of evidence, for a total of 194 closures.

Nevada State Medical Association Liaison Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, reported that a number of policy recommendations were adopted at the recent NSMA annual meeting. Additionally, they had been deeply engaged in the Legislative session and he believed that the NSMA had taken the same position as the Board with respect to all proposed legislation that deals with the Board. The only area in which the NSMA has expressed concern is with authorizing the Executive Director of the Board to issue subpoenas and the Board's oversight of that, as well as the tangible items language. There are 13 bills that specifically refer to the

Hepatitis outbreak and another 10 that refer to it indirectly. Some of these will affect the Board. He also provided an update concerning the activities the Nevada State Medical Association has been involved in concerning issues of injection practices and injection safety and complimented the Board on its new hearings process and new website.

Clark County Medical Society Liaison Report

Warren Evins, M.D., Executive Director of the Clark County Medical Society, was not present, and no report was provided.

Dr. Rodriguez had nothing to report.

Washoe County Medical Society Liaison Report

Jeanie L. Catterson from the Washoe County Medical Society was not present, and no report was provided.

- Secretary-Treasurer
- Status of Finances

Ms. West stated that the Board was in the middle of renewals and had done a nice job of controlling its expenses.

Mr. Ling added that renewals were going well and there has been a good response so far in online renewals.

Federation of State Medical Boards of the United States, Inc.'s 2009 Annual Meeting, April 30-May 2, 2009, Washington, D.C.

Dr. Held told the Board that he, Dr. Neyland, Mr. Cooper and Dr. Calvanese all attended the meeting, with he and Mr. Cooper on scholarship from the Federation. Dr. Held did not feel the Federation presented very much in the way of solutions, and the breakouts to visit Capitol Hill eliminated the regional breakout sessions. With respect to the Day on Capitol Hill, neither the Senators nor the Congressmen were available, so they ended up meeting with staff. Part of the program was to discuss Federation initiatives – one relating to pain management and the other to trying to expand education for public health and preventive medicine. They are setting up a program to attempt to encourage physicians to go into that area. Apparently only about 28 state health departments have physicians in the position of the director of public health and only a small number of them practice in the specialty of public health. There is also an initiative to attempt to get really small hospitals to start residency programs. Both Dr. Neyland and he feel that putting together a quality program requires lots of money and commitment and that would be difficult both logistically and financially for those hospitals they are attempting to target.

Mr. Cooper added there was a lot of material on volunteerism. There were a couple of keynote addresses that had nothing to do with medicine or regulation of medicine.

Dr. Held added there was also an initiative to create term limits for the Federation, which was defeated. In terms of licensure, they mostly discussed maintenance of licensure issues. Scope of practice for doctors of nursing was also discussed.

Discussion ensued concerning who should license doctors of nursing and the proposed changes to the scope of practice of nurse practitioners.

Agenda Item 20

EXECUTIVE STAFF REPORTS

- Consideration and Approval of 2008 Board Annual Report
- Discussion and Approval of Legislative Developments and Issues
- Licensing Improvements and Results
- Board Members Participation in Upcoming Hearings
- Retreat Planning
- Discussion and Approval of Statement of Policy Regarding What Constitutes Practice of Medicine
- Discussion and Approval of Standard Language Regarding Board Orders and Compliance
- Request for Staff and Board Member Attendance at Educational Meetings
- Informational Items
- *Louis Ling, J.D., Executive Director*

Consideration and Approval of 2008 Board Annual Report

Mr. Ling pointed out that the graph on the top of page 6 of the Annual Report was new. What it shows is that for the first time in a long time we are seeing the physician per 100,000 population ratio going up, meaning we have more physicians for the population. Additionally, the graph on the top of page 5 shows the number of disciplinary actions taken by the Board has continued to increase over the last four years.

Dr. Held stated he had never served on the License Application and Malpractice Review Committee. Mr. Ling stated that information would be removed from the report.

Dr. Held moved that the Board approve the 2008 Board Annual Report as amended. Dr. McBride seconded the motion, and it passed unanimously.

Discussion and Approval of Legislative Developments and Issues

Mr. Ling advised the Board that passage of the Board's bill, SB 269, was looking probable, and the language has remained largely untouched. He then explained that SB 364 is causing the Board trouble in two ways. Senator Carlton wanted what he would consider a true reciprocity statute and no one has been able to change her mind. The only other option at that point was to add some conditions to the bill which would at least make the statute less of an open door. The other problem is that the Attorney General added an amendment to the section that currently provides that boards with legal authority to hire attorneys can hire attorneys. The amendment provides that the Board can hire its own attorneys subject to approval by the Attorney General's Office and the Board's attorneys will be subject to the training and performance evaluation of the Attorney General. We are adamantly opposed to it and have gotten the Attorney General to agree to drop the section, but Senator Carlton has so far refused to remove it. We are still

negotiating with her on this provision. We are staying clear of the bills dealing with the Endoscopy Center matter and the Valley Eye Center matter.

Discussion ensued concerning the language of SB 269, with respect to the independent authority given to the Executive Director, such as the ability to issue subpoenas.

Discussion ensued concerning the language related to the inclusion of tangible items in subpoenas and the procedure for issuance of subpoenas in general.

Discussion ensued concerning the summary suspension process.

Licensing Improvements and Results

Mr. Ling explained that the graph provided to Board Members shows the time it takes to obtain a license has dropped consistently, and the average time is currently 55 days. This is one of the statistics that has been used to show the Legislature how the Board is working to improve its own procedures.

Board Members Participation in Upcoming Hearings

Mr. Ling explained that there will be a couple of important, high-profile cases going to hearing between this meeting and the August Board meeting, and he is hopeful that one or more Board Members will be willing to sit with the hearing officer.

Discussion ensued concerning the hearings on these particular cases and hearing procedures in general.

Retreat Planning

Mr. Ling recommended that if the Board wants to hold a retreat, that it be held on the Thursday before the August Board meeting and held outside of the office. The agenda would be open and he wants the Board to tell him what they would like to discuss. One item he would like to discuss would be the investigative/disciplinary process.

Discussion ensued concerning how the retreat should be set up, the date of the retreat and issues that may be included on the agenda.

Discussion and Approval of Statement of Policy Regarding What Constitutes Practice of Medicine

Mr. Ling explained that the issue of what constitutes the practice of medicine is a question that has come up over and over again. The Board does not need to write a regulation to say what is or isn't the practice of medicine because it is already defined by statute. However, a Statement of Interpretation would give the Board a way to say publicly how far it believes it extends and to what types of circumstances. The Nursing Board has this and it is published on its website. This would go a long ways towards answering the question the next time it comes in.

Discussion ensued concerning the language of the statement and whether it should be published. The consensus was that it not be approved for dissemination.

Discussion and Approval of Standard Language Regarding Board Orders and Compliance

Mr. Ling explained that the intent is to create a procedure for those instances when a licensee does not comply with Board-ordered discipline. This procedure would allow for immediate suspension of a license without action of the Board and authorize staff to begin proceedings for imposition of additional discipline and to begin collection efforts, if necessary. All of this would be self-executing.

Discussion ensued concerning whether it was appropriate for the Executive Director to have the authority to put the process into motion or whether that should reside with the Board. It was the consensus that an officer of the Board should make that decision.

Discussion ensued concerning how the process would work.

Mr. Ling told the Board he would replace the "Executive Director" with "an officer of the Board" throughout the written procedure.

Consideration of Request for Staff and Board Member Attendance at Educational Meetings

Mr. Ling advised the Board that he had been invited to attend the New Executives training at the Federation headquarters in Euless, Texas on June 4th.

Agenda Item 21

LEGAL REPORTS - Edward O. Cousineau, J.D., General Counsel; Lyn E. Beggs, J.D., General Counsel; Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

- Board Litigation Status

- Board Litigation Status

Ms. Guerci-Nyhus reported the Attorney General's Office has some ongoing litigation. They still have the two restraining orders against Dr. Desai and Dr. Carrera in place in the Eighth Judicial District Court and injunctions in place against Anamika Jain, Vikas Jain and Stella Chou. The suit by Richard Bell was dismissed by the Court pursuant to a motion to dismiss, and she obtained some good law from the Eighth Judicial District Court saying there is no private right of action for an individual to sue the Board for failing to perform a duty. Another complaint related to the endoscopy matter was filed which attempted to sue the Board on negligence grounds. The Board has since been dismissed as a defendant, although the plaintiff has not articulated why. The Attorney General's Office is still working with Dr. McBride on the Hirschfeld case, which is moving at a very slow pace.

Ms. Beggs reported that at this meeting there were 1 adjudication, 3 hearings, 4 settlements and 5 dismissals before the Board. Following the February Board meeting, 34 letters of concern were sent out, and following this meeting, 29 new letters would be sent out. There were 33 cases scheduled for hearing through November 18, 2009. Eleven formal complaints had been filed since the last Board meeting and 28 cases were pending filing of formal complaints, 17 of which were approved during the latest Investigative Committee meetings. The briefing

schedule has been set in the Wick case in the Nevada Supreme Court. The Washoe District Court still has the Lakner case in hiatus status. Dr. Bass' attorney has filed a petition for judicial review and the opening brief is expected to be filed within the next month.

Agenda Item 22

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the February 6, 2009 Board Meeting

Dr. Anjum moved that the Board ratify the licenses issued and reinstatements of licensure and changes of licensure status approved since the February 6, 2009 Board meeting. Mr. Heffner seconded the motion, and it passed unanimously.

RECESS

Mr. Heffner moved to recess the meeting. Dr. Anjum seconded the motion. Dr. Held recessed the meeting at 6:00 p.m.

SATURDAY, MAY 9, 2009

Board Members Present

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Sohail U. Anjum, M.D.
Javaid Anwar, M.D.
Jean Stoess, M.A.
S. Daniel McBride, M.D.
Van V. Heffner

Board Members Absent

Renee West, Secretary-Treasurer
Beverly A. Neyland, M.D.

Staff Present

Louis Ling, J.D., Executive Director
Edward O. Cousineau, J.D., General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Lynnette L. Daniels, Chief of Licensing
Carolyn H. Castleman, Deputy Chief of Licensing
Jerry C. Calvanese, M.D., Medical Reviewer

RECONVENE

Dr. Held reconvened the meeting at 8:30 a.m.

Mr. Cousineau took roll call, and all Board members were present with the exception of Ms. West and Dr. Neyland.

Agenda Item 23

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

23(a) Keith J. Rosing, M.D.

Dr. Held asked Dr. Rosing whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. McBride questioned Dr. Rosing concerning his affirmative response to Question 12 on his application for licensure.

Dr. Rosing explained the circumstances surrounding the malpractice cases against him.

Dr. McBride moved that the Board grant Dr. Rosing's application for licensure. Ms. Stoess seconded the motion, and it passed unanimously.

23(b) Nitin J. Engineer, M.D.

Dr. Engineer appeared in Reno with his attorney Hal Taylor, Esq.

Dr. Held asked Dr. Engineer whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez questioned Dr. Engineer concerning his affirmative response to Question 13 on his application for licensure

Dr. Engineer explained the circumstances surrounding his arrest for DUI in 2007.

Dr. Rodriguez questioned Dr. Engineer concerning the fact that when he applied for licensure in the state of Kentucky, he failed to reveal to the Kentucky Board that he had been placed on probation during his residency training.

Dr. Engineer explained that he had admitted he had to repeat his fourth year, but failed to mention the one-week suspension because he had forgotten about it.

Dr. Rodriguez questioned Dr. Engineer concerning why he had to repeat his fourth year.

Dr. Engineer described the difficulties he encountered during the first time he went through his fourth year.

Dr. Rodriguez moved that the Board grant Dr. Engineer's application for licensure. Ms. Stoess seconded the motion, and it passed unanimously.

23(c) Jessica A. Petz, R.R.T.

Dr. Held asked Ms. Petz whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Mr. Heffner questioned Ms. Petz concerning her affirmative response to Question 12 on her application for licensure.

Ms. Petz described the circumstances surrounding her arrest for minor in possession of alcohol in 1996 and her arrests for DUI in 2002 and 2007.

Dr. Anjum moved that the Board grant Ms. Petz's application for licensure contingent upon entering into an agreement with the Diversion Program for three years. Dr. Rodriguez seconded the motion, and it passed unanimously.

23(d) Adam B. Phillips, C.R.T.

Dr. Held asked Mr. Phillips whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Anwar questioned Mr. Phillips concerning his affirmative responses to Question 12 on his application for licensure.

Mr. Phillips explained the circumstances surrounding his arrest for domestic violence in 2008.

Dr. Anwar moved that the Board grant Mr. Phillips' application for licensure. Mr. Heffner seconded the motion, and it passed unanimously.

23(e) Rajashree C. Vyas, M.D.

Dr. Held asked Dr. Vyas whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Held stated that Nevada statute requires that an applicant have completed 36 months' progressive postgraduate education and only one of her years was approved by the Accreditation Counsel for Graduate Medical Education, though she completed five years in Radiology.

Dr. Vyas stated that the other years were not approved because they were departmental functions, which are approved by the school's GME office, and not ACGME approved fellowships.

Ms. Daniels explained that because the ACGME did not approve the postgraduate training, the Board would have to approve it in order to grant Dr. Vyas a license.

Dr. Held moved to grant Dr. Vyas' application for licensure. Dr. Anwar seconded the motion, and it passed unanimously.

23(f) Diana C. Reed, M.D.

Dr. Held asked Dr. Reed whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Anjum moved that the Board go into Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anjum moved that the Board grant Dr. Reed's application for licensure. Mr. Heffner seconded the motion, and it passed, with Dr. Held opposed to the motion and all other Board Members voting in favor of the motion.

23(g) Meredythe Dodson, R.R.T.

Dr. Held asked Ms. Dodson whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. McBride questioned Ms. Dodson concerning the fact that she had practiced respiratory therapy in Utah from May to October 2005 without a Utah respiratory therapy license.

Ms. Dodson explained that she was unaware that it was a requirement during that time, and that once she was made aware it was required, she obtained a license in Utah.

Dr. McBride moved that the Board grant Ms. Dodson's application for licensure. Ms. Stoess seconded the motion, and it passed unanimously.

23(h) Hillary L. Barnes, M.D.

Beverly Parker, M.D., Program Director of the Internal Medicine Residency Program at the University of Nevada, School of Medicine, appeared with Dr. Barnes.

Dr. Held asked Dr. Barnes whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Anjum recused himself from consideration of the application for licensure.

Ms. Stoess questioned Dr. Barnes concerning her affirmative response to Questions 8, 19 and 31 on her application for licensure, and asked why she changed specialties.

Dr. Barnes described the circumstances surrounding her substance abuse during her previous residency training at L.S.U.

Ms. Stoess moved that the Board grant Dr. Barnes' application for a limited license contingent upon participation in and completion of her contract with the Diversion Program. Dr. Rodriguez seconded the motion, and it passed unanimously.

23(i) Elliott D. Schmerler, M.D.

Dr. Schmerler was not present at the meeting.

Dr. Schmerler's attorney, Maria Nutile, Esq., appeared on behalf of Dr. Schmerler, and stated that Dr. Schmerler was withdrawing his application for licensure.

Agenda Item 24

MATTERS FOR FUTURE AGENDA

Dr. Rodriguez requested that a discussion be placed on the agenda for the next meeting concerning whether implantable devices being placed under the skin via an incision at tattoo parlors is the practice of medicine.

Dr. Held stated that in addition to the above item, Dr. Mansky's request to address the Board and a discussion concerning the policy and procedure manual are to be placed on the agenda for the next meeting.

Agenda Item 25
PUBLIC COMMENT

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

Dr. Held presented a plaque to Dr. Anjum and thanked him for all of his work on behalf of the Board.

ADJOURNMENT

Dr. McBride moved to adjourn the meeting. Ms. Stoess seconded the motion, and it passed. Dr. Held adjourned the meeting at 11:50 a.m.

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